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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,748	07/31/2003	Takeshi Tsubouchi	033528-006	9932
21839	7590	11/01/2005		
BUCHANAN INGERSOLL PC (INCLUDING BURNS, DOANE, SWECKER & MATHIS) POST OFFICE BOX 1404 ALEXANDRIA, VA 22313-1404			EXAMINER MENDOZA, MICHAEL G	
			ART UNIT 3731	PAPER NUMBER

DATE MAILED: 11/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/630,748	Applicant(s) TSUBOUCHI, TAKESHI	
	Examiner Michael G. Mendoza	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12-21 is/are allowed.
- 6) ☒ Claim(s) 1, 3-11, and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1 and 3-11 have been considered but are moot in view of the new ground(s) of rejection. The Applicant has amended independent claim 1 to include the limitation of "coupled together so as to define a substantially continuous flow path". The newly added limitation changes the scope of the claim requiring new consideration and a new search. A new grounds of rejection is made in view of Récker 2210178.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

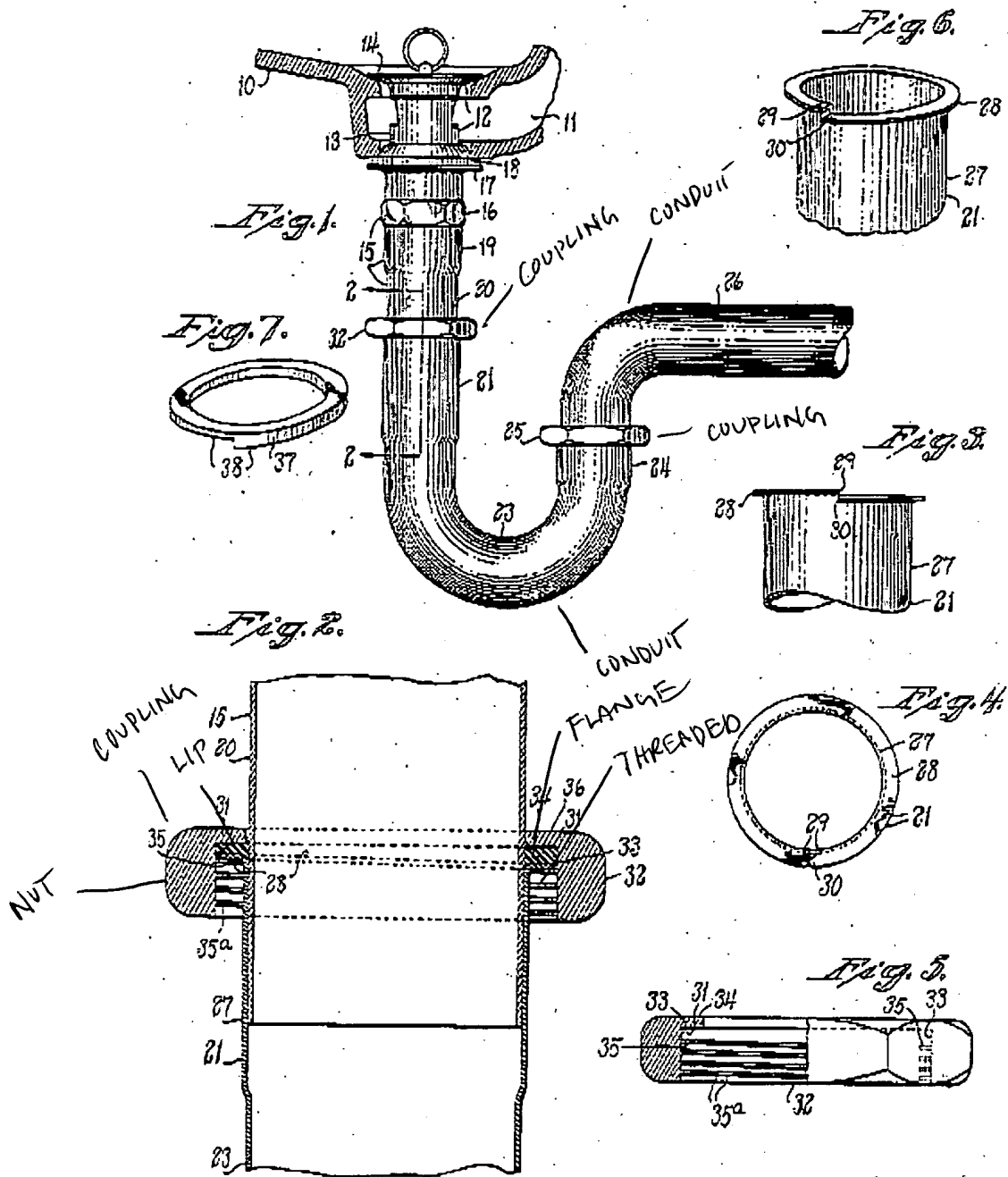
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3, 5-9, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Recker 2210178.

4. ~~Brophy~~ ^{Recker} teaches a conduit assembly, the conduit assembly comprising: a conduit, the conduit including a first curved conduit and a second curved conduit; a first coupling (slip-joint), the first coupling being movable between a rotatable position and a fixed position; and a second coupling (slip-joint) for attaching, the second coupling being movable between a rotatable position and a fixed position; wherein the first and second curved conduits are rigid; wherein the conduit is circular in cross-section; wherein the first coupling comprises a first rotatable nut, the first rotatable nut being movable

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between a rotatable position and a fixed position; wherein the first rotatable nut engages a correspondingly threaded inflow port; wherein the second coupling comprises a second rotatable nut, the second rotatable nut being movable between a rotatable position and a fixed position; wherein the second rotatable nut engages the second end of the first curved conduit, the second end of the first curved conduit being correspondingly threaded; wherein the second rotatable nut includes a lip for engaging the first end of the second curved conduit, the first end of the second conduit including a flange; and wherein the conduit defines a predetermined diameter, thereby maintaining the substantially continuous flow path between the first curved conduit and the second curved conduit. Slip-joint are of a well know construction. As evidenced by Little 2302617, the loosening of a nut in a slip-joint would allow rotation of the conduits.



Inventor
 by Adolph C. Recker
 Seymour, Earl & Nichols
 Attorneys

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 3, 10, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Recker.

7. Recker disclosed the claimed invention except for the use of titanium. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use titanium, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Also it is common knowledge to those of ordinary skill in the art to choose a material that has sufficient strength for the intended use of that material.

8. As to claims 10 and 11, the conduits taught by Recker are fully capable of conducting blood there through.

Allowable Subject Matter

9. Claims 12-22 are allowable over the prior art of record.

10. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fails to teach or render obvious the overall claimed method for implanting a circulatory apparatus in a patient, the apparatus comprising a mechanical circulatory device and a conduit assembly for attachment to the mechanical

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circulatory device, the conduit assembly including a first rigid conduit and a second rigid conduit; the method comprising the steps of: attaching the first rigid conduit to the second rigid conduit with a second coupling in a rotatable position; positioning the mechanical circulatory device relative to the patient; rotating the second rigid conduit until a desired position of the second rigid conduit relative to the patient is achieved; and moving the second coupling to a fixed position so as to maintain a predetermined orientation of the second rigid conduit when the second coupling is disposed in the fixed position.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Contacts


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael G. Mendoza whose telephone number is (571) 272-4698. The examiner can normally be reached on Mon.-Fri. 8:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anh Tuan Nguyen can be reached on (571) 272-44963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



MM


GLENN K. DAWSON
PRIMARY EXAMINER